NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23324
THIRD DIVISION Docket Number CL-23141

Arnold Ordman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8880) that:

(8) The Carrier violated Rule 12 and others of the Clerks' Agreement November 7, 10, 11, 12, 13, and 14, 1975, when they required Chief Clerk Vernon Cecil to suspend duties on his regular assignment and perform duties assigned position of Demurrage Clerk, C-82, on each date.

(b) Carrier shall now allow Claimant Vernon Cecil eight (8) hours pay at the pro rata rate for each date 8s 8 result Of this violation.

OPINION OF BOARD: Claimant Vernon Cecil was regularly assigned to the position of Chief Clerk, C-26, from Monday through Friday, at Plymouth, Michigan. Grady Noel was assigned to the position of Demurrage Clerk, C-82, from Monday through Friday at Plymouth, Michigan. The only other position regularly assigned at Plymouth, Michigan during the time relevant hers was the position of Agent, TE-3, held by 8 prior rights Telegrapher, 8 position not coordinated, at this time, with the clerical positions.

Demurrage Clerk Noel was absent from his assignment, because of illness, on November 7, 10, 11, 12, 13 and 14, 1975. On those dates the Carrier utilized Claimant to do the work of Noel 8s well 8s his own. The claim here in issue is that the Carrier in making this assignment violated Article 12 and others of the Clerks' Agreement; the relief requested is that Carrier allow Claimant eight (8) hours pay at the pro rata rate for each date Claimant was so utilized.

The parties are in accord that the Carrier is normally entitled, under Rule 12(a) (1) of the Agreement, to rearrange tie office force where practicable to perform the work of employes off sick, within the limitations noted in the Agreement. However, a Note to Rule 12(a) (1) and (2) specifically and unambiguously provides that in applying to provisions, "it is understood that employes assigned to do inside work will not be assigned to move to outside work."

The crux of Claimant's complaint here is that as Chief Clerk, all his duties are Of an inside nature, or performed Within the office; that the duties of 8 Demurrage Clerk, which Claimant was utilized to perform, partakes Of outside duties; and that Claimant's utilization to perform those duties violates the Apement.

Throughout the handling of the claim on the property, Carrier took the position that Claimant, in the capacity of Chief Clerk, Is responsible for the supervision of employes who are assigned to work "inside" as well as "outside," and, therefore, by the very nature of these supervisory duties, the Chief Clerk Is considered as assigned to both "inside" and "outside" duties.

On July 23, 1979, Carrier wrote to the Organization reiterating its position that, 8s Chief Clerk, Claimant by the nature Of his supervisory duties is considered as being assigned to both inside and outside duties. The July 23, 1979, letter pointed out, in addition, that the regular duties of Chief Clerk, apart from any supervisory responsibilities, call for outside work in the form of going to the Post Office, calling personally on railway customers relative to billing and/or car usage problem3 and handling waybills and other interoffice correspondence between Plymouth Depot and Plymouth Yard (located approximately three-quarters of a mile away).

Claimant asks the Board to disregard the defense that the regular duties of a Chief Clerk call for performance of outside work because that defense was never advanced in the instant dispute while it was being handled on the property. Claimant notes that the Carrier's July 23, 1979 letter setting forth this defense was written four days after filing of the notice of intent. Prior the-eto, Carrier had relied virtually exclusively on the proposition that Claimant was open to outside assignment3 because of hi3 supervisory status. Examination of the record satisfies us that Issue was never joined on the property as to whether the Chief Clerk, as such, had outside duties.

In these circumstances settled and controlling authority precludes us from considering this belated contention. See Third Division Award No. 20025 (Sickles); 3641 (Sickles); 3950 (Carter); 5107 (parker); 5469 (Carter); 8324 (McCoy). Accordingly, we make no finding on the merits of this contention.

Remaining for consideration is the defense that, by virtue of hi3 supervisory status aver 8 Demurrage Clerk who has outside duties to perform, Claimant as Chief Clerk must be regarded as having outside duties also, for purposes of Section 12. Claimant's basic position in this regard is that supervision of an "outside" position does not assign the particular duties, or functions, of that position to that of the supervising position. In addition, Claimant notes that basic supervision of the office force at Plymouth, Michigan, was entrusted to the Agent who was given an allowance of 137 hours a month for that purpose, the bulk

of his assigned time. By contrast the statement showing disposition of the Chief Clerk's duties at Plymouth reveals that he is designated, among other tasks, to "assist" supervision of the office force and is given a total of five hours per month for that purpose.

The parties cite no precedents on the broad issue whether a supervisor, by virtue of hi3 supervision, takes on the attributes of the position supervised, more particularly, Its character 8s outside or inside work. Nor does the Board think it necessary to reach that issue in the present case. Suffice it to indicate that where, a3 here, the Chief Clerk is designated only to assist in the supervision of the office force, being given8 totaloffive hours per month for the performance of that function, and the total office force in the circumstances consists of one demurrage clerk, some of whose &ties involved outside work, the suggestion that the Chief Clerk thereby become3 an "outside" worker strains credulity and reason. The Board rejects that conclusion.

By parity Of reasoning the Board also rejectsCarrier's defense that under Rule 24(c) of the Agreement, Claimant is not entitled to a penaltyayment. Carrier predicates this defense on the ground that Rule 24(c) preclude3 such payment where employes are rearranged under Rule 12(a) (1). However, 8s to heretofore found, Rule K(8) (1) did not permit Carrier to rearrange Claimant In the instant case because Claimant was an inside worker and couldnot be assigned to an outside job. The defense is rejected and payment will be directed.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, 8s approved June 21, 1934;

That this Division ofthe Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained; Claimant shall be allowed eight (8) hours pay at the pro rata rate for November 7, 10, 11, 12, 13 and 14, 1975.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Panka
Executive Secretary

Dated at Chicago, Illinois, this 19th day of June 1981.